

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

LONNIE T. HAWKINS,

Case No. 3:24-cv-00370-MMD-CSD

Petitioner,

DISMISSAL ORDER

v.

STATE OF NEVADA, *et al.*,

Respondents.

Pro se Petitioner Lonnie T. Hawkins has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 and a motion for leave to proceed *in forma pauperis* (“IFP”). (ECF Nos. 1 (“Motion”), 1-1 (“Petition”).) The Court finds good cause exists to grant Hawkins’ Motion, but, following an initial review of the Petition under the Rules Governing Section 2254 Cases (“Habeas Rules”), the Court finds that the Petition was filed under the wrong statutory section, the Petition is unexhausted, and federal abstention is required.

I. BACKGROUND¹

On December 8, 2023, the State filed a criminal information against Hawkins in the Second Judicial District Court of Nevada in and for Washoe County. *State v. Lonnie Terrell Hawkins*, Case No. CR23-2533. Hawkins pleaded not guilty on January 16, 2024. It appears that Hawkins’s trial is currently scheduled for October 28, 2024. According to the Washoe County Sheriff’s Office’s online inmate search, Hawkins has been held at the Washoe County Detention Facility since October 1, 2023, on the following charges: coercion with force or threat of force, false imprisonment, sexual assault, first-degree

¹The Court takes judicial notice of the online docket records of the Second Judicial District Court and the Nevada appellate courts. These docket records may be accessed by the public online at <https://www.washoecourts.com/Query/DetailedCaseSearch> and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 kidnapping, and possession of controlled substances. It does not appear that Hawkins
2 has filed any appeal with the Nevada appellate courts.

3 In his Petition, Hawkins alleges that his trial counsel: (1) erred in letting the
4 prosecution amend the charges against him after his preliminary hearing; (2) waived his
5 arraignment by forging his signature; (3) has refused to enforce his right to a trial within
6 60 days; and (4) has refused to file a pretrial suppression motion based on Fourth
7 Amendment violations. (ECF No. 1-1.)

8 **II. DISCUSSION**

9 Habeas Rule 4 requires federal district courts to examine a habeas petition and
10 order a response unless it “plainly appears” that the petitioner is not entitled to relief. This
11 rule allows courts to screen and dismiss petitions that are patently frivolous, vague,
12 conclusory, palpably incredible, false, or plagued by procedural defects. *See Valdez v.*
13 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Hendricks v. Vasquez*, 908 F.2d 490,
14 491 (9th Cir. 1990) (collecting cases). Here, Hawkins’ Petition suffers from various
15 procedural defects.

16 First, Hawkins is not in custody pursuant to a state court judgment of conviction.
17 Rather, he is in pre-conviction custody. Accordingly, the only appropriate statutory section
18 for him to pursue his claims is 28 U.S.C. § 2241, not 28 U.S.C. § 2254. *See White v.*
19 *Lambert*, 370 F.3d 1002, 1005-07 (9th Cir. 2004), *overruled on other grounds by Hayward*
20 *v. Marshall*, 603 F.3d 546, 555 (9th Cir. 2010) (en banc).

21 Second, Hawkins has not exhausted the claims within his Petition. Because a
22 federal habeas petitioner incarcerated by a state must give state courts a fair opportunity
23 to act on each of his claims before he presents them in a federal habeas petition, federal
24 courts will not consider his petition for habeas relief until he has properly exhausted his
25 available state remedies for all claims raised. *See Boyd v. Thompson*, 147 F.3d 1124,
26 1128 (9th Cir. 1998). A claim remains unexhausted until the petitioner has given the
27 highest available state court the opportunity to consider the claim through direct appeal
28 or state collateral-review proceedings. *See O’Sullivan v. Boerckel*, 526 U.S. 838, 844-45

1 (1999); *Peterson v. Lampert*, 319 F.3d 1153, 1158 (9th Cir. 2003) (en banc). Hawkins has
2 not alleged or demonstrated that he has fully exhausted his state court remedies. As a
3 matter of simple comity, this Court is not inclined to intervene before giving the Nevada
4 courts an opportunity to redress any violation of Hawkins's constitutional rights. See
5 *Coleman v. Thompson*, 501 U.S. 722, 731 (1991) (explaining that the exhaustion
6 requirement is "grounded in principles of comity; in a federal system, the States should
7 have the first opportunity to address and correct alleged violations of state prisoner's
8 federal rights").

9 Third, Hawkins seeks federal judicial intervention in a pending state criminal
10 proceeding, which is simply not available to him. *Cf. e.g., Sherwood v. Tomkins*, 716 F.2d
11 632, 634 (9th Cir. 1983); *Carden v. Montana*, 626 F.2d 82, 83-85 (9th Cir. 1980). The
12 comity-based *Younger* abstention doctrine prevents federal courts from enjoining pending
13 state court criminal proceedings, even if there is an allegation of a constitutional violation,
14 unless there is an extraordinary circumstance that creates a threat of irreparable injury.
15 See *Younger v. Harris*, 401 U.S. 37, 53-54 (1971). The United States Supreme Court has
16 instructed that "federal-court abstention is *required*" when there is "a parallel, pending
17 state criminal proceeding." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013)
18 (emphasis added); *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts
19 generally abstain from granting any relief that would interfere with pending state judicial
20 proceedings). This case does not present extraordinary circumstances. Defendants in
21 state criminal proceedings routinely allege that state criminal proceedings violate their
22 constitutional rights, including fundamental rights, which makes this a regular occurrence,
23 not an extraordinary circumstance. Hawkins's situation is no different in substance from
24 that of any criminal defendant facing the potential loss of constitutional rights—including
25 the most fundamental right to liberty—in a pending criminal prosecution. Because
26 Hawkins faces no extraordinary or irreparable injuries, federal abstention is required.
27 Since the charges against Hawkins are still pending, dismissal of this action without
28

1 prejudice will not materially impact the analysis of any issue in later-filed habeas
2 proceeding or otherwise result in substantial prejudice.

3 **III. CONCLUSION**

4 It is therefore ordered that the motion for leave to proceed IFP (ECF No. 1) is
5 granted.

6 It is further ordered that the Petition for Writ of Habeas Corpus (ECF No. 1-1) is
7 dismissed without prejudice. Hawkins is denied a certificate of appealability, as jurists of
8 reason would not find dismissal of the Petition for the reasons stated herein to be
9 debatable or wrong.

10 It is further ordered that the Clerk of Court: (1) file the Petition (ECF No. 1-1); (2)
11 add Nevada Attorney General Aaron D. Ford as counsel for Respondents;² (3) informally
12 serve the Nevada Attorney General with the Petition (ECF No. 1-1), this order, and all
13 other filings in this matter by sending a notice of electronic filing to the Nevada Attorney
14 General's office; (4) enter final judgment; and (5) close this case.

15 DATED THIS 22nd Day of August 2024.

16
17 

18 _____
19 MIRANDA M. DU
20 CHIEF UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26

27 _____
28 ²No response is required from Respondents other than to respond to any orders
of a reviewing court.